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United States District Court  
Southern District of Texas  
FILED

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
BROWNSVILLE DIVISION

APR 15 2004

Michael N. Milby  
Clerk of Court

LUIS ALEJANDRO GARZA,  
Plaintiff,

v.

UNITED STATES OF AMERICA,  
Defendant.

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Civil Action No. B-02-154

**DEFENDANT'S UNOPPOSED MOTION FOR  
SUSPENSION OF CASE DEADLINES SET FORTH IN  
THE JULY 28, 2003 AMENDED SCHEDULING ORDER**

TO THE HONORABLE JUDGE OF SAID COURT:

The Defendant, United States of America, moves this Honorable Court for an order suspending the deadlines presently in place for this case. In support of this motion, the United States submits the following:

1. On July 28, 2003, this Court issued an "Amended Scheduling Order" setting motions and discovery deadlines as well as setting this case for final pre-trial conference on May 4, 2004 and jury selection on May 6, 2004.<sup>1</sup>
2. On September 5, 2003, the United States filed a motion to dismiss and alternative motion for summary judgement. Plaintiff filed his opposition to the government's motion as well as an amended Complaint.
3. On January 14, 2004, Magistrate Judge Recio held a hearing on the government's motion to dismiss. During the course of this hearing, the parties advised Magistrate Judge Recio that although some limited written discovery had taken place in the case, the parties hesitated to take additional forms discovery due to the pending jurisdictional motion filed by the United States. At that time, Magistrate Judge Recio acknowledged the need to keep costs of litigation to a minimum and concurred that the best avenue for the time being would be to suspend further discovery until the Defendant's

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<sup>1</sup>Although not addressed in this motion, the Defendant takes the position that Plaintiff is not entitled to a trial by jury for claims raised under the Federal Tort Claims Act. See, 28 U.S.C. 2402.

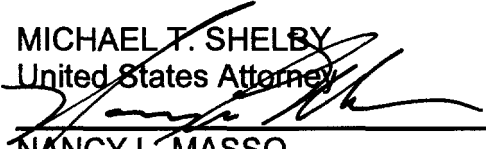
motion had been resolved. No written order regarding suspension of discovery is in place.

4. On February 20, 2004, Magistrate Judge Recio issued a Report and Recommendation to the Court regarding the Defendant's motion; on March 1, 2004, the Defendant filed a timely objection to the Magistrate Judge's Report and Recommendation.
5. No decision has yet been rendered as to the Defendant's motion and its objection to the "Magistrate Judge's Report and Recommendation."
6. Should the Court grant the Defendant's motion, there will be no need for further discovery or trial in this case. However, should the Court deny the Defendant's motion, the parties herein cannot be ready for trial by the May 2004 trial docket without bearing significant expense and possible prejudice for inability to conduct discovery.

WHEREFORE, PREMISES CONSIDERED, the Defendant prays that this Court suspend the deadlines presently in place for this case until the Court has had an opportunity to consider and rule on the jurisdictional issues presently before it.

Respectfully submitted,

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United States Attorney

  
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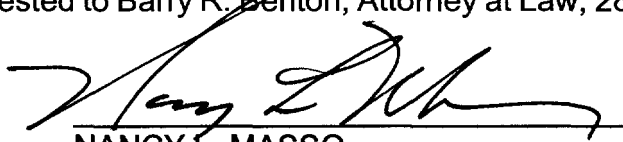
**Statement of Consultation**

I verify that I spoke with Plaintiff's attorney, Barry Benton, regarding this motion on April 13, 2004. Mr. Benton advised that he did not oppose the motion.

  
NANCY L. MASSO  
Assistant U.S. Attorney

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the true and foregoing "*DEFENDANT'S UNOPPOSED MOTION FOR SUSPENSION OF CASE DEADLINES SET FORTH IN THE JULY 28, 2003 AMENDED SCHEDULING ORDER*" was mailed on this the 15th day of April, 2004 via Certified Mail, Return Receipt Requested to Barry R. Benton, Attorney at Law, 284 Ebony Avenue, Brownsville, TX 78520.

A handwritten signature in black ink, appearing to read "Nancy L. Masso", is written over a horizontal line.

NANCY L. MASSO

Assistant United States Attorney